

### Working time flexibility in the German employment relations system: implications for Germany and lessons for the United States

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Peter Berg<sup>\*</sup>

## **Working Time Flexibility in the German Employment Relations System: Implications for Germany and Lessons for the United States<sup>\*\*</sup>**

**Abstract** – Competitive conditions are leading to much experimentation within and decentralization of the German employment relations system. In this article, I show how flexible working time is an integral part of the German employment relations system and how flexible working time arrangements are contributing to its transformation. In addition, I discuss the implications for employers and employees of flexible working time, and the lessons the German experience with flexible working time has for the United States. Flexible working time contributes to the decentralization of German employment relations on multiple levels, particularly within the enterprise. The benefits to employers of flexible working time take many forms and are generally positive, whereas the implications for employees are more mixed. The main lesson for the United States is that labor market institutions still matter in developing flexible working time models that can meet both employer and employee needs.

### **Arbeitszeitflexibilität im deutschen System der Arbeitsbeziehungen: Implikationen für Deutschland und Lehren für die USA**

**Zusammenfassung** – Wettbewerbsbedingungen führen zunehmend zu Dezentralisierungs-Experimenten im deutschen System der Arbeitsbeziehungen. In diesem Artikel wird gezeigt, inwiefern flexible Arbeitszeiten ein integraler Bestandteil des deutschen Systems sind und wie flexible Arbeitszeitmodelle zu dessen Transformation beitragen. Außerdem werden die Implikationen, die flexible Arbeitszeiten für Arbeitgeber und Arbeitnehmer haben, sowie die Lehren der deutschen Erfahrungen für die USA diskutiert. Flexible Arbeitszeiten tragen zur Dezentralisierung des deutschen Systems der Arbeitsbeziehungen auf diversen Ebenen bei, insbesondere innerhalb der Unternehmen. Aus Arbeitgebersicht nimmt der Nutzen flexibler Arbeitszeiten vielfältige Formen an und ist generell positiv, während die Implikationen für Arbeitnehmer ambivalenter Natur sind. Die wichtigste Lehre für die USA besteht darin, dass Arbeitsmarktinstitutionen nach wie vor relevant sind für die Entwicklung flexibler Arbeitszeitmodelle, die den Bedürfnissen sowohl der Arbeitgeber als auch der Arbeitnehmer gerecht werden.

Key words: **Flexible Working Time, German Employment Relations,  
Decentralization, Pacts for Employment and Competitiveness,  
Working Time Accounts**

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## Introduction

We are living through a period of fundamental change in the way work is conducted and governed around the world. Employment relations institutions are being challenged and restructured under the weight of global economic pressure. The demand for more flexibility by organizations and individuals in how work is conducted has grown in light of new economic challenges. Companies want flexible structures and work processes that allow them to adjust their labor resources to meet rapidly changing market demands. This push for flexibility by companies is also contributing to the growth of decentralized bargaining structures that allow for more open standards that reflect local needs. At the same time, workers desire more flexibility in when, how, and where they work. The increase in female labor force participation, the rise of dual earner couples, and the costs of child rearing have altered the balance between work and non-work roles and contributed to a variety of flexible work arrangements across countries (Berg et al. 2004).

Germany is no exception to this trend. Much has been written about the changing German employment relations model, the decentralization of bargaining, and the decline of union and employer association membership. The current literature on the transformation of German employment relations (Thelen/Kume 1999; Thelen/Van Wijnbergen 2003; Behrens 2004; Bosch 2004; Raess 2006; Doellgast/Greer 2007), and Herrigel in this volume, show that while the German system is not breaking apart it is changing. Competitive conditions are leading to much experimentation within the system. Traditional roles are being challenged and new roles are emerging. These changes have resulted in a more diverse and decentralized German employment relations model with varying consequences for employers and employees.

Working time issues have not been brought into the center of this debate about the transformation of German employment relations. In this paper, I show how flexible working time is an integral part of the German employment relations system and how flexible working time arrangements are contributing to its transformation. In addition, I discuss the implications that flexible working time has for employers and employees and the lessons the German experience with flexible working time has for the United States.

Varying daily and weekly hours, averaging weekly working time, and working time accounts are widespread throughout the German economy and have emerged in Germany as crucial mechanisms to increase the flexibility and productivity of labor. The practices associated with working time flexibility are prime examples of how the German social partners are spawning new ways to increase competitiveness and provide employees with flexibility. Flexible working time practices are also key elements of opening clauses that shift bargaining power from sectoral collective agreements to local management and works councils. Thus, working time flexibility plays a significant role in reinforcing both decentralization within the German collective bargaining system and in the tension that exists between labor union interests in maintaining sector labor standards and local actors interests in working conditions tailored to their needs. This tension is evident in the negotiation of pacts

for employment and competitiveness (PECs), which restructure working time arrangements to gain cost savings in exchange for employment security guarantees.

The use and importance of flexible working time within Germany has significant and differing implications for employers, employees, and the future direction of the German model. Employers clearly benefit from flexible working time by more efficiently using labor resources. The impact of flexible working time arrangements on employees, however, is more mixed and depends very much on how these arrangements are structured and the control employees have over the use of time (Berg et al. 2004). Details such as the time period over which weekly working hours are averaged, the consistency of their schedule, the options employees have in balancing their working time accounts, the extent to which employees can draw on their banked hours, and the extent to which employees have access to overtime premiums are important in determining employee experiences with working time. The terms and conditions of working time flexibility have been shaped by collective negotiations and vary widely across sectors and companies. The decline of unionization and works councils coverage raises the issue of whether these institutions can effectively represent worker interests in working time flexibility across the whole economy. The form and distribution of working time flexibility is continually being negotiated and changed. It is both driving and responding to changes in the German employment relations system.

In the next section, I briefly discuss the institutional arrangements of the German employment relations model and how they are changing. I then focus on the extent of working time flexibility in the German employment relations system. Next, I examine the implications of these time flexibility practices for employers, employees, and the German employment relations system. I conclude with a discussion of what the U.S. can learn from flexible working time practices in Germany.

### **The German employment relations model**

The literature on the German employment relations model has emphasized many different aspects of the institutional infrastructure that governs the employment experience. Finegold and Soskice (1988) view Germany as generating a “high skills equilibrium” that can justify good wages at the middle and low ends of the wage distribution. Streeck (1991) describes a “diversified quality production” model that focuses on how the polyvalent skills of the workforce and the organization of work in German firms generate high productivity and functional flexibility. Coates (2000) describes Germany as practicing “negotiated capitalism,” and Hall and Soskice (2001) characterize Germany as a “coordinated market economy” where industrial relations practices work with corporate governance decisions and educational institutions to create incentives for long-term decision making and innovation. All these models emphasize Germany’s strength in high skill, functionally flexible, high value-added production supported by an employment relations system that supports centralized bargaining structures and participation in decision-making at the firm level.

Events over the last 15 years have generated much discussion over whether these characterizations of German employment relations still make sense and whether the German employment relations system can survive in a globalized economy (Bosch et

al. 2006). The unification of Germany brought with it tremendous cost to the country and fundamental changes to the employment relations system. The centralized bargaining structures of western Germany have been eroded by the lack of adoption of sectoral collective agreements by firms in eastern Germany and declining union and employer association membership. In addition, works councils remain clustered in large firms with smaller firms largely unaffected by this form of interest representation. In 2004, in West Germany only 10 percent of firms had a works council, whereas 47 percent of all employees were represented by a works council at their workplace (Ellguth/Kohaut 2005).

For some, these events demonstrate the decline of the German employment relations model and its incompatibility with the current global economic environment (Martin/Ross 1999; Nickell et al. 2005; Eichhorst/Konle-Seidl 2006). For others, these events indicate that the German employment relations system is in transition, reconfiguring based on its own unique institutions to meet a variety of economic and social needs (Iversen et al. 2000; Thelen/Kume 1999; Hall/ Soskice 2001). Many of the elements of the German employment relations system remain intact despite economic and political pressure, but as new employment relations practices and behaviors emerge, outcomes at the workplace are becoming more diverse.

Behrens and Jacoby (2004) describe this time as a period of experimentalism within German collective bargaining. Their analysis of the chemical, metal, and construction sectors does not show a rejection of the foundation of the employment relations system or an effort by employers to unilaterally pursue a neo-liberal agenda. Rather, they see greater decentralization occurring within the system, moving control from centralized organizations (national unions and employer associations) to local organizations (union locals, works councils, and individual employers) (Behrens/Jacoby 2004: 118). This decentralization reflects the desire of local actors for more flexibility.

Doellgast and Greer (2007: 70f.) describe the changing employment relations system as undergoing vertical disintegration. Their case studies in the auto and telecommunications industries show that decentralization in the employment relations system has occurred not just through opening clauses but also by firms outsourcing work covered under sectoral collective agreements to establishments with a weaker firm-level agreement or no agreement at all. This is contributing to the development of core and periphery workers within Germany along the industry production chain. In addition, outsourcing has fostered a complex mix of firm, sectoral, and occupational bargaining structures within each industry, making it difficult for worker representatives to coordinate working conditions across groups.

The changes occurring in the German employment relations system are essentially an ongoing restructuring of the roles of centralized and decentralized actors in the system. Power is being shifted away from sectoral unions and employer associations and toward local management, and where present, works councils. Flexible working time reinforces this trend and contributes to the tension between centralized and decentralized actors. Unions and employer associations set the parameters of working time in sectoral agreements, but also allow for much detail to be determined by local actors. This procedure means that working time is contested ground on several levels.

Flexible working time is a condition of work that is negotiated and renegotiated by unions and employer associations within sectoral agreements and by local management and works councils within plant agreements, by individual employees and their supervisors. As power shifts to local actors, it is unlikely that labor unions can fully protect flexible working time standards negotiated in sectoral agreements because of given the variety of work schedules within enterprises, the low presence of works councils across establishments and the use of PECs by management to gain working time flexibility concessions.

### **Working time flexibility in the German employment relations model**

Time flexibility in scheduling, work arrangements, and leaves are an integral part of the decentralization taking place in the German employment relations system. Sectoral collective agreements seek to balance interests in establishing standard practices across the sector and in allowing establishments flexibility in meeting individual needs. Working time flexibility is a key mechanism used by individual companies and establishments to gain flexibility in meeting changing demands and improving efficiency. Flexible working time is a major component of opening clauses, a crucial element of PECs, and an important means of shifting power to local management and works councils. Moreover, it is a critical working condition that exemplifies the overall tension in employment relations system between sectoral standardization and local flexibility.

The 1984 collective agreement on working time reduction in the metal industry was a key moment in the development of working time flexibility within Germany. In 1984, IG Metall waged a national strike over a general reduction in weekly working time to 35 hours with full pay. After mediation, a compromise was reached in which weekly working time was reduced 1.5 hours in exchange for flexibility in implementing the reduction at the plant level. According to the sectoral agreement, works councils and managers were to negotiate how to structure the working time reduction. The sectoral agreement allowed for variation in working time in response to product demand, and for working time to vary across types of workers, e.g. skilled workers could work longer hours to avoid production delays. Subsequent collective agreements in 1987 and 1990 led to further reductions in working time and continued to effectively increase the role of works councils in structuring working time arrangements. These agreements reflected the shift from blanket reduction in working time to flexibility in the structure of working time at the establishment level (Thelen 1993: 30). These agreements in the metalworking industry essentially provided a model for German companies to achieve flexibility and gain efficiency in the face of greater competition during the 1990s. This led to the emergence over time of a variety of working time flexibility models in sectoral and company agreements across the economy.

Working time flexibility is a multi-dimensional construct. It consists of the duration and timing of work. Duration refers to the length of working time, and timing refers to when one works. Duration and timing essentially define the work schedule or how many hours over what period of days one works. Typically, the practices associated with working time flexibility include: schedules, leaves, working time accounts, annualized hours contracts, weekly averaging of working time, and



flexible work arrangements such as less than full-time work and short-hours jobs (Berg et al. 2004). Working time flexibility also encompasses the opportunity workers have for work schedule variability as well as the choice and control employers and employees maintain over the work schedule. Thus, working time flexibility inherently concerns not only the duration and timing of work but also issues of opportunity, choice and control exercised by employers and employees. To say that there is flexibility in working time is not to imply that workers have total control over their work hours or that both employers and employees benefit equally from flexible working time practices.

There is not just one form of working time flexibility in Germany but many types, the effects of which differ for employers and employees. The flexible work schedules, flexi-time, and short and long term accounts can give employees flexibility in meeting work and family demands and give employers improved efficiency. Whether these mutual gains are realized depends on the details of the working time arrangements and the actions of managers and worker representatives as well as individual workers and their supervisors. However, often as part of PECs, working time flexibility can also lead to unpaid overtime, a reduction in work hours and subsequent loss in employee income, as well as the substitution of part-time work for full-time work. In these cases, working time flexibility becomes part of a concession bargaining strategy trading flexibility for employment security. These different aspects to working time flexibility are important parts of sectoral collective agreements, which have been crucial in driving flexible working time throughout the economy. Working time provisions and arrangements vary within these agreements across sectors. Understanding the details of working time arrangements and the institutions that govern them are critical to understanding their implications. Thus, in the next section, I discuss how working time flexibility is treated in three sectors.

### ***Working time flexibility in sectoral collective agreements***

The discussion of working time flexibility in sectoral collective agreements in this section is based on information gathered in Bispinck and WSI-Tarifarchiv (1996; 2005). These two documents are an excellent source of detailed information on working time provisions in major sectoral agreements. These agreements articulate three areas of potential flexibility in working time: (1) the designation of standard weekly working days, (2) the daily and/or weekly upper and lower limits within which working time may fluctuate, (3) the equalization period within which weekly working time must reach its average level (2005: 9). The flexibility potential detailed in working time provisions in collective agreements has increased in the last several years. The ability of establishments to structure and divide working time across employees has expanded. It is common across a wide variety of sectors for weekly working time to vary substantially week to week. The agreements typically have opening clauses allowing works councils to reduce or extend working time for certain groups of workers or for firms that undergo economic distress. Works councils play a critical role at the establishment level in structuring working time and creating working time accounts in which employees can bank hours for future paid time off or cash. Working time accounts are available to a significant number of workers and their use continues to

grow. In 2003, 42 percent of workers in the west and 38 percent of workers in the east worked a schedule with access to a working time account (Bauer et al. 2004). The average hours worked should reach the established standard average weekly working hours over some equalization period, usually set at six or twelve months; however, hours worked in excess of this standard average can be banked in a working time account (2005). Some agreements have established long-term working time accounts that allow employees to carry balances over extended periods of time. The ability to vary hours over long periods of time and tailor working time to particular groups of workers provide firms the capacity to increase efficiency by better matching labor supply to fluctuations in product or service demand.

Not only have collective agreements established the ability to vary weekly working time, but also the possibility of long-term changes to standard weekly working time in cases where companies can show jobs are threatened by competition. These types of opening clauses allow management and works councils to negotiate either increases or reductions in standard weekly working hours in exchange for some type of employment security. These PECs are key mechanisms for employers to lower cost and gain concessions through adjustments in working time. In addition, they reduce worker access to overtime premium pay and therefore lower overall employee compensation (Rehder 2003). Whereas the vast majority of PECs provide guarantees against involuntary layoffs (71%), 13 percent of PECs provide no management guarantees at all. Even in cases with formal guarantees against involuntary layoffs, management can still reduce employment by offering retirement incentives and employee attrition (Seifert/Heiko 2005: 226).

### ***Flexible working time in three sectors***

To provide more detail on flexible working time provisions, I focus on collective agreements in the chemical, banking, and metalworking sectors and discuss how working time provisions have evolved over time and how unions and employer associations are managing the tension around decentralization.

#### ***Chemicals***

The 1995 sectoral agreement in the chemical industry in West Germany established a standard workweek of 37.5 hours with a weekly working time corridor of 35 – 40 hours within which working time can vary. Working hours for particular groups of workers can be set within this range with the agreement of the works council. Any effort within this corridor to establish working time off the standard for a large part of the enterprise must be done with the agreement of the collective bargaining parties, e.g. the employer association and trade union. This is one way the sectoral collective bargaining parties retain some control over the decentralization of working time standards. Flexi-time or banking hours worked above the standard weekly average of 37.5 hours is possible through an enterprise agreement with the works council. One is able to maintain a balance of up to 16 hours. The equalization period by which the average standard weekly working time must be reached and working time balances cleared is 12 months. The agreement specifies a 36 month equalization period for those engaged in project work. No language regarding working time accounts was in the 1995 agreement.



The 1995 sectoral agreement in the chemical industry in East Germany was more traditional than the agreement in West Germany. It set a standard average work week of 40 hours with no specific working time corridor. Flexi-time or banking hours worked above the standard weekly average of 40 hours is possible through an enterprise agreement with the works council. One is able to maintain a balance of up to only 10 hours. The equalization period by which the average standard weekly working time must be reached and working time balances cleared is 6 months. The agreement also contains no language regarding working time accounts (1996). These collective agreements demonstrate how working time is an important part of the decentralization taking place within German collective bargaining. The sectoral agreements establish particular areas where enterprise agreements with works councils would allow deviations from standard working time for particular groups on a more permanent basis and empower works councils to negotiate the structure of flexi-time work schedules that permit workers to bank hours as paid time off.

Since 2004 sectoral agreements in the east and west chemical industries have included provisions that permit enterprise agreements with works councils to establish and structure working time accounts. The collective agreements provide the overall parameters of short-term and long-term time accounts, whereas the works councils through enterprise agreements fill in the details about how many hours can be banked, procedures for banking hours, and the use of those hours. In addition, the agreement establishes some insurance protection for the positive working time account balances.

The 2004 agreements also reflect concern by the collective bargaining parties about too much decentralization to the works council, and therefore, have provisions that require their approval. Whereas the standard average work week in the east remains at 40 hours, companies may adopt the 37.5 hours standard with an enterprise agreement with the works council and consent by the collective bargaining parties. This consent is also required in establishing an equalization period of 36 months for employees on project work. This provision is now found in both east and west contracts. In addition, both east and west contracts include provisions on part-time work and working part-time in preparation for retirement (2005). How effective these consent provisions will be in checking the power of local management and works councils is unclear.

### *Banking*

In the banking sector agreement, the standard average work week is 39 hours with a maximum weekly working time set at 45 hours. Working hours may vary if agreed to with the works council through an enterprise agreement. The development of working time provisions from 1995 to 2004 in the west and east banking industries include an expansion of the equalization period from 3 to 6 months, the introduction of long-term working time accounts, and expansion of Saturday work. The structure of the long-term working time accounts is determined by enterprise agreement with the works council; however, the sectoral agreement limits the maximum accumulation to 175 hours per calendar year. The 2004 agreement expands the conditions under which employees can be asked to work Saturdays to include not only particular locations and

functions but also places where competitive pressure is high and other credit granting institutions are working on Saturdays (2005).

In addition to standard opening clauses empowering works councils to negotiate the structure and conditions for varying working time, the 2004 banking sector agreement also contains a provision allowing enterprise agreements with the works council to reduce working hours up to 31 hours a week with a compensatory 20 percent reduction in pay to secure jobs and avoid layoffs. This provision is an example of a PEC as part of a collective agreement rather than a plant agreement. In their analysis of PECs, Seifert and Heiko (2005) indicate that 24 percent of PECs were based on labor agreements negotiated by trade unions and employer associations or local management. The majority of PECs focuses on investment, productivity enhancement, and work sharing as opposed to direct compensation reduction. The most often used practices to achieve flexibility in PECs are working time measures, including time off in lieu of overtime pay, working time accounts, reductions in the use of overtime, and working time reductions (with or without pay). In contrast to the Chemical sector agreement where unions and the employer association are trying to regain some control over working time through consent provisions, the PEC in the banking sector is an example of using flexible working time as a concession to gain employment security. This approach encourages decentralization of working time standards across the sector and shifts power to local actors.

#### *Metalworking*

The metalworking industry collective sectoral agreement is well known for its flexible working time practices. Standard average weekly working hours are 35 hours in the west and 38 in the east. The agreements also specify that it is possible to increase working time up to 40 hours a week for 18 percent of the workforce (13 percent in the east); however, under certain conditions longer working hours can be extended to up to 50 percent of the workforce (45 percent in the east) if the collective bargaining parties agree. This more recent provision reflects the trend away from working time reduction and toward increasing working hours.

The 2004 "Pforzheim Agreement" in the metalworking industry takes a slightly different approach to decentralization than the other two sectors by allowing companies to deviate from any regulation in the sectoral agreement as long as it increases or stabilizes existing employment, brings new investments, or enhances competitiveness. In response to employers' demands for more local flexibility, IG Metall requires that companies demonstrate economic hardship by opening up their financial records and asking external auditors to prepare expert assessments prior to any plant agreement (Jürgens et al. 2006). In addition, management must create a mid-term strategy document explaining how the changes will meet target goals and offer a return to employees, e.g. job guarantees (Leutz 2007).

This agreement differs from the typical PEC in that it demands external validation of the economic situation of the firm. Access to balance sheets and an external auditor's assessment are designed to restrict the use of this option only to firms that are truly experiencing economic difficulty. However, as firms initiate this procedure, IG Metall is now engaging in more plant and company level bargaining (Jürgens et al.

2006: 15). Thus, as power shifts to the establishments, IG Metall must try to defend standards on a plant by plant, company by company basis. This will have implications for the use of IG Metall resources into the future.

Comparisons across the three sectoral agreements make clear the important role of works councils in negotiating the details of flexible working time arrangements. It is also clear that there is not one approach to flexible working time. Different sectors have different models and each is coping with further pressure toward decentralization. This comparison also reveals that flexible working time is operating on multiple levels. In one sense, framework provisions that specify parameters for work hours, equalization periods, and working time account usage provide workers with a minimum standard regarding working time and rights to banking paid time worked. But when economic times are difficult for firms and employers pursue a PEC, flexible working time arrangements can change and become a means of concessionary bargaining leading to shorter or longer hours without comparable pay. While employment security is no doubt welcomed by the employees, achieving that security risks undermining the flexible working time standards established across sectoral agreements. This exacerbates tension between works councils and unions and has raised questions about the legitimacy of works council action (Rehder 2006).

### **Implications of working time flexibility for employers, workers, and the German model of employment relations**

Flexible working time practices bring significant benefits for German employers. Being able to vary daily and weekly working hours without adjusting pay allows employers to more effectively synchronize labor demand and labor supply without bearing the cost of overtime premiums. Working time arrangements with hours averaging and working time accounts to bank future paid time off have advantages for a variety of businesses, including those that focus on project work where hours vary over the life of the project as well as those subject to seasonal or business cycle variation.

An electro-optic systems company I visited in 2000 provides an example of how employers can benefit from time flexibility on project work.<sup>1</sup> Members of a work group at this company are assigned a project to build a new piece of equipment over a six to nine month period. The project is structured to require an average of 38 hours of work per week. Within the working time corridor, an agreement is reached between managers and the work group about how many hours they can work each week over the six or nine months of the project. Managers and workers can agree on working shorter weekly hours during the design phase, and then increase hours as the piece of equipment goes into production. Under this working time model, the employee is paid for 38 hours per week regardless of what they actually work. The company agreement specified an equalization period of two years for hours worked over the 38 hour weekly average. Only balances over 44 weekly hours are paid at a premium rate. At the end of two years, employees are able to take their balances as cash or paid time off.

From the perspective of the company, the main advantage of this working time model was the cost savings on overtime and the decoupling of pay from time worked.

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<sup>1</sup> The working time model described here is still in use today.

With a constant rate of pay and an equalization period of two years, worker behavior is shifting to a salary model where one works to the needs of the project without a regular accounting of time premiums. The overtime premium is only paid at the end of the equalization period if the worker has worked in excess of an average of 44 hours a week over 2 years. The advantage to the company is (a) that it reduces the total volume of working hours because they have the flexibility to go down to 32 hours a week during slack times and (b) they will usually not have to pay premium pay for hours worked above 38 a week. In addition, they are adjusting work hours and developing different schedules tailored to particular occupations.

Other general advantages to firms of varying daily and weekly working time is that it saves the cost of laying off workers because of business cycle variation and the cost of training new hires. Firms are able to keep continuity within work teams, retain critical skills, and amortize human capital investments over a longer period of time. These are important considerations in an economy based on highly skilled workers. Further training of employees is also facilitated by banking excess hours worked. Many contracts and plant agreements allow management to use these hours for further training. Thus, training that was previously on straight time as part of the normal work day is being covered now by hours earned in excess of normal working time (Seifert 2007).

These flexible working time practices also open up other forms of flexibility for German firms. Under codetermination legislation, works councils and management must agree on overtime hours. Working time accounts and averaging the work week within some corridor of hours means fewer overtime hours. Employers are able to obtain the extra work as part of the structures set up in the enterprise agreement and do not need to engage in separate discussions with the works council about overtime. Furthermore, working time accounts and varying hours worked essentially decouple pay from hours worked as discussed in the example from the electro-optic firm. An employee is paid a salary for the standard weekly working hours, e.g. 38 hours. One is expected to vary the actual hours worked to the needs of the business. Overtime is only calculated on hours worked over the average at the end of an equalization period, e.g. one year. These hours are banked in a working time account, which has essentially become a new form of compensation. These hours are worked but not paid to the employee until some future date. They are a debt owed to employees, which in some cases is never paid. Eleven percent of time balances expire from working time accounts that have no equalization period regulations. Only 2 percent expire from working time accounts that do have such regulations (Bauer et al. 2004).

While there are many advantages to employers of flexible working time arrangements, there are also costs to be borne. For many firms, employment guarantees may be required to achieve such flexibility (although these guarantees do not prevent all forms of workforce reduction). In addition, firms must manage the varied work schedules of employees. This usually results in more time spent by middle managers and supervisors to coordinate schedules within and across work groups.

For workers, the effect of working time flexibility is more mixed. On the one hand, there are clearly advantages over a fixed work schedule where employees are not able to make any independent decisions to deviate from set work times. Fixed work schedules provide employees with predictability in planning their non-working lives,

but these schedules do not allow employees to adjust to pressures and changes that are part of non-work responsibilities in advanced economies. Flexible working time arrangements found in Germany do not provide workers total control over their working time nor do they subject workers to total control by management. While variation in working time is primarily driven by the needs of the business, surveys indicate that 89 percent of employees say that they have influence over their start and end times (Bauer et al. 2004). Moreover, 71 percent of employees say that they can change their working time at short notice in the event of unforeseen circumstances. Only 17 percent of employees, however, say they can manage their working time accounts as they wish. This percentage varies by occupation with white collar employees at the high end of the distribution and shift workers at the low end (Seifert 2003: 54). In general, employees indicate that they have some limited control over their working time, but exercising this control must be done in negotiation or consultation with others.

A 1999/2000 survey of works councilors regarding time withdrawals from working time accounts reinforces this notion. "In the overwhelming majority of companies with a works council, the withdrawal of time credits from working time accounts takes place in consultation with superiors (67%) or colleagues (30%)" (Seifert 2003: 54). This demonstrates that the exercise of working time control is very decentralized, often relying on compromise among individuals within groups or between supervisors. The pervasiveness of flexible working time has led to more negotiation at multiple levels within the employment relations system. It remains an open question how well equipped individuals are to handle these negotiations, particularly in the absence of works councils, or what role unions and works councils play in strengthening individuals in these types of negotiations.

Whereas German workers indicate some degree of individual control over working time, they also benefit from collective control over working time (Berg et al. 2004). In comparison with the United States, union representatives and works councils are actively present, at least in large firms, structuring the terms and parameters of individual working time negotiations. They have negotiated various working time accounts and insurance protection for long-term account balances. They also are able to monitor working time arrangements to ensure the employers follow procedures and employees do not lose their accumulated account balances. The ability to exercise codetermination rights is a key factor affecting control over working time.

Working time flexibility brings with it other advantages to employees. It serves as an alternative to forced redundancies and has provided employees with employment security in the face of growing international competition. The use of working time accounts allows workers to take sabbatical-type leaves, expand further training opportunities, and reduce hours in anticipation of retirement (Seifert 2006: 29).

On the other hand, working time flexibility comes at a cost to workers. The average contractual standard weekly working hours is 38.9 in West Germany and 39.8 in East Germany, but actual weekly working hours is 2.5 hours on average higher than the contractual standard (Bauer et al. 2004). After years of working time reduction, there is concern that hours of work are increasing again, particularly among highly skilled workers and firms outside of sectoral collective agreements (Haipeter/Lehndorff 2005). With flexi-time and working time corridors, German flexible work-



ing time practices allow for the expansion of hours without the overtime pay premiums. This results in a loss of income or the substitution of future time off for immediate increases in pay. Where workers accrue future paid time off, accessing these balances depends very much on whether they have access to working time accounts, the procedures for saving and accessing balances, and the presence of a works council at the enterprise. For example, those workers without access to a working time account work more unpaid overtime on average per week (1.3 hours) than those with access to a working time account (.3 hours). Even for employees that have access to a working time account, 22 percent of employees work with no specified equalization period or upper hours limit. For these employees, time balances are more likely to be paid out in cash or simply expire without being used (Bauer et al. 2004). Moreover, flexible working time practices can also reduce work-family balance as they often result in schedules that include atypical work hours, such as on Saturday and Sunday.

In short, it is unions and works councils that can mitigate the negative effects from flexible working time practices by negotiating clear standards around which time flexibility is built, by exercising codetermination rights in setting work schedules, and by monitoring the actions of management to ensure employees are fairly compensated for the hours they work. Where unions and works councils are not present the risk of longer hours and unpaid overtime increase.

With regards to implications for the German employment relations system, working time flexibility is an important element in the further decentralization of German employment relations. As discussed previously, flexible working time is a key element of opening clauses and PECs, which bring flexibility into the workplace. The practice of working time flexibility, however, is also encouraging further decentralization beyond plant agreements at the enterprise. While unions set standards and works councils set the details of flexible work arrangements, actual working hours are often the result of individual negotiations, especially in professional jobs or in small and medium size firms where works councils are not present. Working time is becoming less of a standardized working condition and more of an individual or group variable established at the sub-enterprise level. Moreover, given individual and group negotiations over time, works councils have less ability to regulate overtime hours, which weakens an important right of the works council.

Whereas unions continue their defense of sectoral collective agreements that balance centralized bargaining structures with enterprise flexibility, working time flexibility practices pose new challenges to works councils in monitoring the myriad of work schedules across occupations and work processes as well as the separate negotiations taking place within work groups and with supervisors. This also works against union attempts to establish working time standards within sectors. Flexible working time practices require not only new ways of managing people but also new actions by works councils to balance collective needs with individual desires. Thus, flexible working time is not only decentralizing bargaining power but individualizing working conditions and challenging employee representatives to support worker interests without negotiating away access and control over working time arrangements beneficial to the employee.



### **Lessons for the United States**

Institutions that govern the employment relationship in the United States are quite different than those in Germany. Union density and coverage is much lower in the U.S., and employers have much more discretion in dealing with personnel matters. U.S. workers possess no codetermination rights and can only win representation by labor unions through elections by a simple majority. Even when unions win elections, about a third of the victories do not result in a first contract as employers utilize appeal processes and other mechanisms to prevent contracts. Although U.S. workers cannot be dismissed for reasons of gender, age, or race, they generally work in an employment at-will environment and can only win just cause protection through union representation. In comparison with Germany, U.S. employers enjoy far fewer restrictions on dismissal.

The employment relationship in the U.S. is viewed as primarily an economic transaction between relatively equal parties, reflecting the country's liberal market economy (Block et al. 2004). Employers are offering jobs at particular wages and working conditions and employees can accept these terms or look elsewhere in the labor market. Because the social component of the employment relationship and the inherent imbalance of power between employers and employees are not recognized, there is minimal perceived need for government intervention. U.S. workers have no legal right to annual leave, sick leave, personal or carer's leave, bereavement leave, or time off for public holidays. Health insurance coverage is obtained as an employee benefit, dependent upon employment rather than a right of every individual in the society. Maintaining one's health care coverage has a huge impact on labor supply decisions. People will work more hours and atypical times in order to maintain their jobs and health coverage.

With regard to legislation, the Fair Labor Standards Act (FLSA) has an important impact on working time flexibility in the United States. This law applies to non-supervisory workers, e.g. those without administrative, professional, or executive duties, and those who are paid on an hourly basis and earn less than \$ 455 per week. For these workers any hours worked over 40 hours in a week are paid at 1.5 premium rate. The intent of the FLSA is to raise the cost to employers of scheduling long hours. It was passed in 1935 as a worker safety issue and a way to check employer abuse. However, many employers today maintain that it limits their ability to implement flexible schedules, which would be advantageous for the business as well as desired by employees. Employers have sought to avoid the requirements of the FLSA by reclassifying employees as "exempt" from the act, i.e. not subject to overtime premium pay, who were previously consider "non-exempt." In 2004, the Bush administration issued new regulations for the FLSA that increased the ability of employers to reclassify workers in this way (Eisenbrey 2004).

In 2003, there was a proposal to give workers the opportunity to exchange compensatory time off in lieu of overtime payments for extra hours worked. The Republican-sponsored Family Time Flexibility Act sought to change the Fair Labor Standards Act to allow private sector employers the ability to offer their employees the choice of opting for paid time off as compensation for working overtime hours. The choice of taking paid time off in lieu of overtime cash wages would be paid at a rate of 1.5 hours of compensatory time per hour of overtime worked. Overtime pay would continue to

be calculated at a rate of 1.5 for every hour worked. Employees could accrue up to 160 hours of compensatory time per year. Any unused compensatory time would be paid back to employees in cash at the end of the year (United States House Education and Workforce Committee 2003).

This failed proposal was opposed by labor unions because they did not think that the choice of time vs. cash would be fairly given to employees, and because U.S. workers lack sufficient representation at the workplace to ensure that they would be able to access accrued time balances. Although the proposal states that employees can choose whether they want to take time off or cash payments for overtime hours worked, employers would certainly encourage employees to take the compensatory time option so they could avoid costly overtime payments. Moreover, employers, not the employees, would decide when the compensatory time could be used. There was nothing in the proposal about working time accounts or how accrued working time would be accounted for or monitored. The Family Time Flexibility Act was really about giving employers more discretion to lower employment costs rather than implementing a sustainable flexible working time system that balances employee and employer needs.

The employment at-will environment encourages employers to use layoffs to reduce labor costs rather than invest in working time flexibility as an efficiency tool. Moreover, U.S. employers generally view working time flexibility practices as benefits to recruit and retain employees not efficiency practices. As such, they are limited in their use. Only 28% of all full-time wage and salary workers had flexible schedules that allowed them to vary the time they began or ended work, and fewer companies offered flexible scheduling in 2004 than they did in 2001 (United States Department of Labor 2005).

With pressure to simply maintain wage and benefit levels, the interest of U.S. unions in flexible working time has been rather narrow. Unions' primary interests are in preserving full-time work with health care and other benefits and therefore tend to resist negotiating reductions in weekly working time or part-time work options. With full health and pension benefits linked to full-time employment, unions' priorities lie in preserving benefits and the income from full-time work. While unions do negotiate alternative work schedules, such as flex-time, compressed work weeks, telecommuting, or job sharing, more effort is put into securing paid leaves for union members and preserving overtime premium rates.<sup>2</sup> Opportunities to average hours across several weeks or bank hours in working time accounts are effectively closed off by the FLSA regulations. Given the largely union free and unregulated labor market, working time flexibility in the U.S. is for the most part something that is acquired informally through individual negotiations with supervisors. Whereas employees in EU countries have the right to request flexibility in their work hours, U.S. workers rely on the goodwill of management or the bargaining power of unions to gain access to working time flexibility.

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<sup>2</sup> These assessments are based on current research conducted by interviewing different local union leaders in different industries across the United States. A good source to view examples of contract provisions relating to flexible schedules and leave benefits is the Labor Project for Working Families web site: <http://www.working-families.org/>.

Legal changes that would raise the cost of dismissals, decouple health care benefits from employment, and provide individuals the right to request alternative work schedules would encourage more flexible working time arrangements. Ultimately, however, the ability of workers to participate in determining the parameters of flexible working time practices, to use these practices, and to maintain these practices as regular working conditions will depend on reinvigorating unions or some other form of interest representation.

What the German experience with working time flexibility shows the United States is that there are significant efficiencies to be gained by working time flexibility and that these efficiencies can be achieved through collective bargaining and codetermination. Although these institutions of worker representation and participation are weakening and power is shifting to local actors, unions and works councils have been and remain critical to ensuring that some balance of employee and employer interests is maintained in the pursuit of flexibility. Rather than a constraint on working time flexibility, these representative institutions have facilitated its use and used it as a key element in bargaining to preserve jobs.

If working time flexibility in the U.S. is to move beyond employee benefit status and become a more established condition of work, institutional change will need to occur to ensure that workers as well as companies benefit more directly from them. Germany shows how time can be used in a decentralized way to meet the efficiency needs of individual employers through working time corridors and can be used as a form of flexibility for employees. Maintaining such a system of flexibility that balances the interests of employers and employees depends ultimately on the institutions that govern the workplace.

## **Conclusion**

Flexible working time has become an integral part of the employment experience for German workers and is a key source of efficiency for German employers. Flexible working time is contributing to a transforming, more decentralized German employment relations system. Varying daily and weekly working time, averaging the weekly working hours, and the establishment of working time accounts are efficiency solutions consistent with a highly skilled workforce, employment security, and managed decentralization of employment relations. Sectoral collective agreements have been effective in establishing working time standards and opening clauses have allowed local actors to tailor working time practices to local needs. However, flexible working time is also challenging unions and works councils and pushing managed decentralization in new ways. PECs use concessions on flexible working time standards to save jobs and reduce labor costs. While PECs bring benefits to local workers in terms of employment security, they undermine the flexible working time standards negotiated at the sectoral level and contribute to tension between works councils and unions. In addition, the use of flexible working time practices within firms has also contributed to sub-enterprise decentralization of working time flexibility as the involvement of individuals and groups in negotiating working time leads to a variety of different schedules and practices within the firm. This type of decentralization challenges works

councils and labor unions on how to effectively manage and represent individual working time needs.

Flexible working time practices also have differential effects on employers and employees. Employers benefit from working time flexibility as an efficiency tool that can improve their use of labor and capital and lower overtime premium costs. Whether employees benefit from flexible working time practices depends a great deal on the extent to which they are part of sectoral agreements and represented by works councils. These institutions provide workers with some individual and collective control over working time. They are also critical to providing procedural clarity to the use of flexible working time arrangements and to monitoring working time account balances. However, the decline of collective bargaining coverage and works councils across sectors poses a danger for Germany. Inequity between represented and non represented workers in how they experience flexible working time could grow as a result. As discussed above, where works councils are not present, workers tend to work longer and experience more unpaid overtime. In addition, as flexible working time practices get more diverse within firms and labor unions struggle for members, representing workers will require new strategies that perhaps emphasize the important role labor representatives play in ensuring consistency of procedure and process with regards to working time rather than one standard for all workers.

An important lesson for the United States from Germany is that institutions still matter. Despite decentralization and declining union membership, German workers still have the right to establish works councils that can codetermine the structure and management of working time and the power of sectoral collective bargaining agreements that provide standards and models for working time flexibility. The result is more options and choices with regard to working time in comparison with U.S. workers, who rely on employers to provide time flexibility as a recruitment and retention tool. From this side of the Atlantic, the German model of employment relations still has a lot to say about how to implement flexible working time in ways that can benefit both employers and employees.

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